

**Letter of Findings: 09-0495
Sales and Use Tax
For the Year 2007**

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ISSUES

I. Sales and Use Tax – Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5 et. seq.; IC § 6-2.5-5-2; IC § 6-2.5-8-8; [45 IAC 2.2-5-4](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Gross Income Tax Div. v. National Bank and Trust Co., 79 N.E.2d 651 (Ind. 1948).

Taxpayer protests the assessment of sales and use tax on an all-terrain vehicle.

II. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a farm in Kentucky. In 2007, Taxpayer purchased an all-terrain vehicle (ATV) in Indiana. Taxpayer submitted an exemption certificate to the seller at the time of purchase and consequently did not pay the sales tax. The Indiana Department of Revenue (Department) later determined that the purchase of the ATV did not qualify for an exemption from the sales tax. Therefore, the Department assessed Indiana use tax, as well as interest and penalty. Taxpayer protested the assessment of the tax. A hearing was held and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b), (c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In accordance with IC § 6-2.5-2-1(a), a sales tax, known as state gross retail tax, is imposed on Indiana retail transactions. IC § 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property for consideration in Indiana. IC § 6-2.5-2-1(b) provides that the person who acquires the property in a retail transaction is liable for the tax on the transaction and must pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

There are number of statutory exemptions from the sales and use tax. IC § 6-2.5-5 et. seq. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Div. v. National Bank and Trust Co., 79 N.E.2d 651, 654 (Ind. 1948).

Pursuant to IC § 6-2.5-8-8(a), a person who makes a purchase in a transaction which is exempt from the sales and use tax may issue an exemption certificate to the seller instead of paying the tax and the seller would have no duty to collect the tax on the purchase. In this instance, Taxpayer issued the seller an exemption certificate on the basis that Taxpayer considered the transaction exempt from sales and use tax because he would exclusively use the ATV on his farm.

Taxpayer bases its claim for exemption from the sales and use tax on the following provisions of IC § 6-2.5-5-2(a) which states as follows:

Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

This exemption statute is further explained in the regulations at [45 IAC 2.2-5-4\(e\)](#) as follows:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

In his protest letter, Taxpayer stated that it used the ATV exclusively for farming purposes and therefore the vehicle should be exempt from Indiana sales tax. The standard that Taxpayer describes is the standard for the agricultural exemption in Kentucky. As stated above, in Indiana, an agricultural exemption from the sales and use

tax does not exist solely because an ATV is used exclusively on a farm. Under Indiana law, the ATV must be directly used in the direct production of agricultural products (this is referred to as the "double direct" test). IC § 6-2.5-5-2(a); [45 IAC 2.2-5-4](#)(e). The use of the ATV on the farm must directly impact the direct agricultural production process. Examples of exempt uses include using the equipment to plant seeds, treat the plants with fertilizer, and harvest crops.

Prior to the hearing Taxpayer filled out Form AGQ-100, the Agricultural Equipment Exemption Usage Questionnaire, describing use of the ATV on his farm and an approximate number of days for each described use. The uses included planting cover crop and clover, hauling feed to livestock to be sold, transporting employees to hay fields and crops, spot spraying pastures and around fields, checking fences around his property, fence repair, tagging trees in his nursery and scouting grain fields, checking levees and pumps, taking soil samples, checking soil moisture, and herding cattle. Taxpayer's only exempt use related to planting clover (for animal feed) and spot spraying pastures (but not spot spraying around the fields). Taxpayer's exempt use amounted to approximately 2 percent of the overall use of the ATV according to the Department's post-assessment calculations.

According to Taxpayer's description of the use of the ATV, it is mostly not used in a manner directly affecting the growth of agricultural products on the farm. Rather, the ATV is used to perform necessary but ancillary agricultural functions. Based on the Department's post-assessment calculations, Taxpayer should, therefore, be assessed use tax based on 98 percent non-exempt use. See [45 IAC 2.2-5-1](#)(c)(3).

FINDING

Taxpayer's protest is denied in part and sustained in part.

II. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has affirmatively established, as required by [45 IAC 15-11-2](#)(c), that its actions were due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of use tax is denied in part and sustained in part. Taxpayer's protest of the negligence penalty is sustained.

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